IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

FAO.No. 360 OF 2007()
---
AGAINST THE ORDER DATED 27/10/2007 IN IA.632/2007 IN
OS.100/2007 of SUB COURT, PATHANAMTHITTA
.....

APPELLANT/PETITIONER/PLAINTIFF
---

SABURA, SHAN MANZIL, MANGARAM MURI,
KONNI VILLAGE.

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS: RESPONDENTS/DEFENDANTS
---

1. SUSEELA, KADAVANTHURUTHIYIL,
MANGARAM MURI, KONNI VILLAGE.

2. ANIL KUMAR, -DO-

3. MAYA SUNIL, TEACHER, NAVODAYA SCHOOL,
KOTTARAKKARA, KOTTARAKKARA VILLAGE.

ADV. SRI.C.S.MANILAL

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 17/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & V. K. MOHANAN, JJ.

F.A.O. NO. 360 OF 2007

DATED THIS, THE 17TH DAY OF DECEMBER, 2007.

J U D G M E N T

Raman, J.

This is an appeal filed against the order passed by the court below, dismissing an application for attachment before judgment.

2. The property admittedly belonged to the second defendant who is arrayed as the second respondent in this appeal. The suit is one for money based on a cheque as well as based on original consideration. The cheque was admittedly issued by the first respondent. However, there is an averment in the plaint that all the defendants are jointly and severally liable since the amount was advanced for a joint purpose. According to the appellant, the second defendant has not denied the receipt of notice or joint liability and the pleading that the defendants borrowed the amount for their common need. They have not disputed the relationship.

3. We have gone through the written statement filed by the second defendant, a copy of which was made available to us by the learned counsel for the appellant. The written statement shows that the second defendant denied all the averments and that he has also contended that he has no

knowledge about the alleged transaction and he is a stranger.

4. In the circumstances, the correctness or otherwise of the transaction alleged in the plaint has to be proved by adducing evidence. Written statements are yet to be filed by the defendants and pleadings are not complete. At this stage, it cannot be said that there is a prima facie case as against defendants 2 and 3. Therefore, we do not find any ground to interfere with the order passed by the court below. However, it has to be observed that the observations of the court below cannot affect the merits of the suit, since at this stage, with the available materials, only a prima facie finding could be reached for the purpose of considering balance of convenience. We make it clear that if at a later stage of the proceedings, after the pleadings are completed and any fresh materials are made available before the court below so as to come to a different conclusion, it is open to the appellant to file a separate petition for the relief sought for without being affected by the dismissal of this appeal or the impugned order.

Subject to these observations, the appeal is dismissed.

P.R. RAMAN,
(JUDGE)

V. K. MOHANAN,
(JUDGE)

knc/-